

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Communications and Public Utilities Committee

BILL: SB 2494

INTRODUCER: Senator Baker

SUBJECT: Energy Diversity & Efficiency Act

DATE: April 12, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.			EP	
3.			CA	
4.			GA	
5.				
6.				

I. Summary:

The bill creates the Florida Energy Diversity and Efficiency Act to govern the siting of new nuclear power plants. The act is modeled after the existing Power Plant Siting Act. The bill:

- Changes the criteria the Public Service Commission is to use in its determination of need for the nuclear power plant, requiring the commission to grant the petition if it finds that the nuclear power plant will:
 - Provide needed base-load capacity;
 - Enhance the reliability of electric power production within the state by improving the diversity of power plant fuels and reducing the dependence of this state on fuel oil and natural gas; and
 - Provide a cost-effective, although not necessarily the least cost, alternative source of power, taking into account the need to improve the fuel diversity, reduce the dependence of this state on fuel oil and natural gas, mitigate air emission effects within the state, and contribute to the long-term stability and reliability of the electric grid.
- Exempts nuclear plants from the requirement that a utility seeking to build a power plant solicit bids from other sources of power.
- Provides that after the need determination petition has been granted, the utility has the right to recover any preconstruction costs, stating that these costs are not subject to challenge unless the commission finds by clear and convincing evidence that the utility was imprudent in incurring costs significantly in excess of the initial, nonbinding estimate; a substantial increase in the current “preponderance of the evidence” standard in prudence reviews.
- Includes in the definition of the term “nuclear power plant,” associated transmission lines, including not only lines and substations directly interconnected to nuclear plants,

but also any transmission upgrades or expansions on the utility's transmission system. As a result, any grid-wide upgrades required to reliably handle the electric output of the proposed nuclear plant would be considered as part of the licensing process required under this act.

- Provides new criteria for approval or denial of the certification by the Siting Board.
- Streamlines and shortens PPSA time frames by combining determination of the application's completeness and sufficiency; eliminating mandatory land use and certification hearings, and changing deadlines.

The bill creates the following sections of the Florida Statutes: 403.550, 403.551, 403.552, 403.553, 403.554, 403.555, 403.556, 403.557, 403.558, 403.559, 403.560, 403.561, 403.562, 403.563, 403.564, 403.565, 403.566, 403.567, 403.568, 403.569, 403.570, 403.571, 403.572, and 403.573.

The bill amends section 403.503 of the Florida Statutes.

The bill reenacts sections 380.23(3)(c) and 403.5175(1) of the Florida Statutes.

II. Present Situation:

Sections 403.501-403.518, F.S., are the "Florida Electrical Power Plant Siting Act" (PPSA). Under the PPSA, for an electrical plant proposal to proceed, the Public Service Commission (PSC or commission) must make an affirmative determination of need for the plant. Under s. 403.519, F.S., in determining whether to approve a need petition, the PSC is required to consider the following specified criteria: the need for electric system reliability and integrity; the need for adequate electricity at a reasonable cost; whether the proposed plant is the most cost-effective alternative available; available conservation measures which mitigate the need for the plant; and other matters within the commission's jurisdiction. In connection with the determination of whether the proposed plant is the most cost-effective alternative, the PSC has established Rule 25-22.082, F.A.C., on selection of generating capacity. This rule requires that the utility seeking to build a power plant request bids for alternatives to its proposed plant in order to meet the identified need for power. The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project's cost-effectiveness.

The remainder of the PPSA siting process is overseen by the Department of Environmental Protection (DEP). The process includes appointment of an administrative law judge (ALJ), who presides over the proceedings and litigation, reports and participation by all affected state and local government agencies, a land use hearing and a mandatory certification hearing involving opportunities for public participation, and a final approval or denial of the plant certification by the Governor and Cabinet sitting as the Siting Board.

Speaking generally, recovery of the costs of building and operating the plant begins after the plant becomes operational.

The Federal Energy Policy Act of 2005 provides significant financial incentives that may inure to the benefit of Florida consumers. These incentives, however, are limited to the first 6,000

megawatts of new nuclear plants constructed. To date, utilities in a number of other states have announced their intent to build new nuclear plants.

III. Effect of Proposed Changes:

Section 1 states that the act may be cited as the Florida Energy Diversity and Efficiency Act. The act is patterned after the existing PPSA, with many of the proposed changes based upon the proposed streamlined PPSA provisions contained in Senate Bill 888 and House Bill 1473, which streamline and shorten PPSA time frames by: combining determination of the application's completeness and sufficiency; eliminating mandatory land use and certification hearings, and changing deadlines. Significant differences between these proposals are noted below.

Section 2 provides legislative intent, declaring that it is in the public interest and critical to the health, prosperity, and general welfare of the state and its citizens to promote the expansion of nuclear generation by the siting of new nuclear power plants and associated facilities within the state.

Section 3 provides definitions, most of which are adapted from those used in the PPSA, with exceptions for using the term "nuclear" in lieu of "electric." In defining the term "nuclear power plant," the bill expands the current corresponding definition of "electrical power plant" to include in the term "associated facilities," at the applicant's option, associated transmission lines, including not only lines and substations directly interconnected to nuclear plants, but also any transmission upgrades or expansions on the utility's transmission system. As a result, any grid-wide upgrades required to reliably handle the electric output of the proposed nuclear plant would be considered as part of the licensing process required under this act.

Section 4 provides the powers and duties of DEP, with these powers being much the same as those under the PPSA.

Section 5 provides for the applicability of this new act, stating that it applies exclusively to any new nuclear power plant and to any expansion in steam-generation capacity of any existing nuclear power plant.

Section 6 provides for the distribution of the nuclear power plant certification application and the scheduling of the siting process.

Section 7 provides for the appointment of the administrative law judge.

Section 8 provides for the determination of completeness, combining the determinations of completeness and sufficiency.

Section 9 provides for preliminary reports of affected agencies.

Section 10 provides for the notice of the DEP recommendation on the site certification application.

Section 11 provides for the certification hearing

Section 12 provides for the hearing by the Siting Board. New criteria for approval or denial and new time frames are provided. If no certification hearing is held, or within 60 days of ALJ's recommended order following a certification hearing, the Siting Board must approve or deny issuance of a certification by written order. If denied, the reasons for denial are to also be included in the order. The new criteria for approval or denial are whether and the extent to which the location, construction, or operation of the proposed nuclear power plant will:

- Meet the electrical energy needs of the state in an orderly and timely fashion, as determined by the commission;
- Comply with nonprocedural requirements of agencies;
- Be consistent with applicable local government comprehensive plans and in compliance with applicable zoning ordinances. If the proposed nuclear power plant is not consistent with applicable local government comprehensive plans or does not comply with local zoning ordinances, the board shall order that reasonable and available methods be used to minimize any inconsistency with applicable future land-use categories or applicable local zoning in order to make the proposed nuclear power plant compatible with existing land uses surrounding the site; and
- Create a reasonable balance between the need for the nuclear power plant as a means of providing abundant, low-cost electrical energy and the impact upon the public and the environment resulting from the location, construction, and operation of the proposed nuclear power plant.

Section 13 provides for alteration of time limits.

Section 14 provides that the act supersedes any conflicting law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency and preempts the siting, regulation, and certification of nuclear power plant sites and nuclear power plants.

Section 15 provides for the effect of certification.

Section 16 provides for notice and costs of the proceeding.

Section 17 provides for revocation or suspension of the certification.

Section 18 provides that proceedings under this act are subject to judicial review in the Florida Supreme Court instead of the district court of appeal.

Section 19 provides for enforcement of compliance.

Section 20 provides for availability of information.

Section 21 provides for modification of a certificate.

Section 22 provides for supplemental applications for sites certified for ultimate capacity.

Section 23 provides for disposition of fees.

Section 24 provides for the PSC determination of need. The bill provides new criteria for the determination, requiring the commission to grant the petition if it finds that the nuclear power plant will:

- Provide needed base-load capacity;
- Enhance the reliability of electric power production within the state by improving the diversity of power plant fuels and reducing the dependence of this state on fuel oil and natural gas; and
- Provide a cost-effective, although not necessarily the least cost, alternative source of power, taking into account the need to improve the fuel diversity, reduce the dependence of this state on fuel oil and natural gas, mitigate air emission effects within the state, and contribute to the long-term stability and reliability of the electric grid.

The bill also exempts nuclear plants from PSC Rule 25-22.082, F.A.C., which requires a utility seeking to build a power plant to solicit bids from other sources of power.

The bill also provides that after the need determination petition has been granted, the utility has the right to recover any costs associated with “siting, design, licensing, or construction of the plant....” The bill states that these costs are not subject to challenge unless the commission finds by clear and convincing evidence that the utility was imprudent in incurring costs significantly in excess of the initial, nonbinding estimate. This is a substantial increase in the current “preponderance of the evidence” standard in prudence reviews. Additionally, the bill provides that imprudence may not be found for any costs outside the utility's control “including delays in obtaining necessary governmental agency permits or licenses; delays due to litigation; increased costs for equipment, engineering, material, or construction; increases due to inflation or other economic factors; or increases in costs due to laws, rules, or regulatory conditions imposed by a state or federal governmental agency or court following the issuance of a need-determination order by the commission.” In addition, a utility's right to recover costs associated with a nuclear power plant may not be raised in any other forum or in the review of proceedings in such other forum.

Under traditional ratemaking practice, expenditures for any pre-operational costs to build power plants would accrue in a regulatory account and when the plant becomes operational, all costs in this account would become part of the total plant cost that could be placed in rate. PSC practice does allow public utilities to request early cash flows to occur for power plant construction costs upon a showing that the utility would suffer financial hardship without such early recovery of costs.

Sections 25, 26, and 27 make technical changes.

Section 28 provides that the act takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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